

March 28, 2012

Jim Cook
P O Box 459
Montague, CA 96064

Re: Your Request for Informal Assistance
Our File No. I-12-019

Dear Mr. Cook:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Additionally, our advice is limited to obligations arising under the Act. We do not address the applicability, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

Because your question is general in nature and does not refer to any specific governmental decision before your agency, we are treating your request as one for informal assistance.²

QUESTION

As a member of the County Board of Supervisors may you accept a consulting project from a city within your county and from a neighboring county?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

The Act does not prevent public officials from accepting outside employment. However, once you accept such employment you will have an economic interest in your employer if you earn more than \$500 in a 12-month period and you may not participate in any governmental decision that will have a reasonably foreseeable material financial effect upon any of your economic interests.

FACTS

You are a Siskiyou County Supervisor. This is a part time position and most of the supervisors in your county have second jobs. You have an extensive 25-year background in grant management, and before being elected you had your own business in this field and worked for other firms as well.

You have been asked by a local city in Siskiyou County and a neighboring county to respond to a Request for Proposal (RFP) regarding grant management for a State of California Community Block Grant. The city and the neighboring county have established procedures to select a grant management consultant through a RFP process.

You have reviewed the minutes of the Siskiyou County Board of Supervisors for the past 7 years and have not found any item brought to the Board by the city.

You have spoken with the County Counsel and your private attorney and neither have seen a conflict of interest if the local city or the neighboring county selects you as a consultant, so long as you do not participate in decisions in the future that involve these entities.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision.

Steps One and Two: Is the individual a public official making, participating in making, or influencing a governmental decision?

As a member of the Siskiyou County Board of Supervisors you are a “public official” within the meaning of the Act.³ (See Section 82048.) However, you have not stated that you will be participating in a governmental decision that is before the Board. Therefore, unless you will be making, participating in making or otherwise using your official position to influence a governmental decision you do not have a conflict of interest under the Act. If you find that you will be making, participating in making or using your official position to influence a governmental decision in the future, please contact us for further assistance.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl

³ If a public official’s office is listed in Section 87200, which specifically includes members of a Board of Supervisors, and the official has a conflict of interest in a decision noticed at a public meeting, the official must: (1) verbally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18702.5(b)(1)(B), on the record of the meeting and immediately prior to the discussion of the item; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item. For closed sessions, consent calendars, absences, and speaking as a member of the public regarding personal interests, special rules found in Regulation 18702.5 subdivisions (c) and (d) apply. (Section 87105.)